

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

MIDNIGHT MADNESS DISTILLING, INC.

Debtor.

Chapter 7

Case No. 21-11750 (MDC)

**Hearing Date:**  
**April 27, 2022 at 10:30 a.m. (ET)**

**Objection Deadline:**  
**April 20, 2022**

**MOTION OF CHAPTER 7 TRUSTEE FOR ORDER AUTHORIZING THE  
TRUSTEE TO PAY THE DEBTOR'S MARKETING BROKER,  
WM. F. COMLY & SON, INC., APPROVED COMPENSATION  
FROM SALE PROCEEDS**

Bonnie B. Finkel, in her capacity as the chapter 7 trustee (the "Trustee") for the bankruptcy estate of debtor Midnight Madness Distilling, Inc. (the "Debtor"), hereby files this motion (this "Motion") for an order authorizing the Trustee to pay the approved compensation of the Debtor's marketing broker during its Chapter 11 bankruptcy case (the "Chapter 11 Case"), Wm. F. Comly & Son, Inc. ("Comly"), from the proceeds of the Debtor's sale of assets, and in support hereof respectfully states the following:

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On June 21, 2021, the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court.
4. On June 22, 2021, the Debtor filed an application to employ Comly as its marketing broker pursuant to sections 327 and 328 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 (the "Comly Employment Application") [D.I. 21]. The Comly Employment Application was approved by this Court by order entered on July 1, 2021 [D.I. 57].

5. Comly implemented a marketing program to promote the sale of the Debtor's assets and conducted an auction. The marketing efforts and auction culminated in the Debtor's entry into an Asset Purchase Agreement (the "APA") with Millstone Distillery LLC ("Millstone"). This Court entered an order approving the APA and the sale to Millstone thereunder (the "Sale") on September 17, 2021 [D.I. 178]. The Sale closed and Millstone paid the purchase price under the APA.

6. On October 13, 2021, this Court entered an order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code [D.I. 191]. On October 14, 2021, the Trustee was appointed.

7. Following the Trustee's appointment, certain proceeds from the Sale (the "Sale Proceeds") were transferred to the Trustee and the Trustee remains in possession of these Sale Proceeds.

8. On November 3, 2021, the Debtor filed an application approving the compensation of Comly for its services [D.I. 202]. On December 17, 2021, this Court entered an order [D.I. 238] allowing Comly the sum of \$46,500.00 as compensation for fees and expenses (the "Allowed Comly Compensation").

9. The Trustee understands that the Debtor and its secured lender, PNC Bank ("PNC"), agreed that the Allowed Comly Compensation should be paid from Sale Proceeds, which constitute PNC's collateral and are now in the possession of the Trustee. The aforesaid agreement to allow payment from PNC's collateral is evidenced in the approved cash collateral budget agreed to by PNC and the Debtor [D.I. 89] during the Chapter 11. However, due to the timing of the closing on the Sale and the entry of order approving the Allowed Comly Compensation the Debtor did not make payment to Comly prior to conversion.

10. The Trustee has no objection to making payment of the Allowed Comly Compensation from the Sale Proceeds. However, the Trustee respectfully requests the entry of an order authorizing the Trustee to do so.

11. Notice of this Motion has been served upon: (i) the Office of the United States Trustee, (ii) counsel to the Debtor, (iii) counsel for PNC Bank, (iv) Comly, (v) creditors appearing on the Debtor's filed Schedule D, Creditors Who Have Claims Secured by Property, (vi) creditors appearing on the Debtor's filed list of creditors who have the 20 largest unsecured claims, and (vii) parties appearing on the Clerk's Service List including all parties in interest having requested notices pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties") by U.S. first-class mail. The Trustee submits that such notice to the Notice Parties is appropriate and sufficient under the circumstances given the relief requested.

WHEREFORE, the Trustee respectfully requests that this Court enter an order, substantially in the form submitted herewith, authorizing the Trustee to pay the Approved Comly Compensation from the Sale Proceeds.

Dated: April 7, 2022

By: /s/ John T. Carroll, III  
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Chapter 7 Trustee*